IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 18 OF 2003.

Mr. Avelino Pereira,
H. No. 264, Batty Ward,
P.O. Orlim, Goa. ... Applicant.

Versus

1. State through P.I.,
   Porvorim Police Station,
   Porvorim.
2. Nelson Clement,
   r/o H. No. 202,
   Vasudha Hsg. Colony,
   Alto St. Cruz.
3. Sanjay Singh Thakur,
   r/o C-5 Raido Handric
   Society, Vasco-da-Gama.
4. Stanley Rodrigues,
   r/o H. No. K-2, Reis Magos,
   Kegdevelim, Bardez-Goa.
5. Feliciao Rodrigues,
   r/o K-24, Kegdevelim, Reis
   Magos, Verem. ... Respondents.

Mr. Aires Rodrigues, Advocate for the Applicant.

Mr. A.P. Lawande, Advocate for the Respondents 2, 4 and 5.

Coram : P.V. HARDAS, J.

Date : 19th June 2003.

ORAL ORDER.

By consent of learned counsel for parties, heard finally.

2. This revision has been filed against the Judgment of the learned Judicial Magistrate, First Class, Mapusa, dated 16th October 2002, in Criminal Case No. 261/2001/C, acquitting the accused for an offence punishable under Section 304-A read with Section 34 of

the Indian Penal Code. The respondents/accused had filed applications at Exhibits 8, 10 and 11 claiming that there was no prima facie evidence against them and, therefore, prayed that they be discharged.

3. The learned Judicial Magistrate, First Class, exercising powers under Section 258 of the Code of Criminal Procedure acquitted the accused as aforestated.

4. At the outset it is brought to the notice of this Court by Mr. Lawande, learned counsel appearing on behalf of the respondents, that, admittedly, no evidence had been recorded by the learned Judicial Magistrate, First Class and, therefore, the learned Judicial Magistrate, First Class, could not have acquitted the accused while exercising powers under Section 258 of the Code of Criminal Procedure.

5. Section 258 of the Code of Criminal Procedure reads thus:-

> **"258. Power to stop proceedings in certain cases.**-- In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce

> a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge."

On perusal of the said provision, it is seen that in any summons-case instituted otherwise than on a complaint, the learned Magistrate has the power to stop the proceedings and where such stoppage of the proceedings is made after the evidence of the principal witnesses has been recorded, he may acquit the accused and in other cases, the release of the accused would have the effect of discharge. It is submitted before me by the learned counsel for the parties that the learned Magistrate has not recorded the evidence of any witnesses. If that be the case, the learned Magistrate, while exercising powers under Section 258 of the Code of Criminal Procedure, did not have the jurisdiction to acquit the accused. Admittedly, the Order impugned in this revision was passed on the basis of applications moved by the respondents/accused for discharge. On consideration of the material, the learned Judicial Magistrate, First Class, if so satisfied, could have at the most released the accused, which would have the effect of discharge. The parameters of challenging either discharge or acquittal are different.

6. This is a revision against acquittal and the Order passed by the learned Judicial Magistrate, First Class, is an Order without jurisdiction. He has

exercised the powers of acquittal which were not vested in him under law. There is a manifest error committed by the learned trial Court. The scope of revision against acquittal is extremely limited. This is a fit case for interfering with the impugned Order. The Order impugned is unsustainable and is, hereby, quashed and set aside. The matter is remitted to the trial Court to decide the applications at Exhibits 8, 10 and 11 afresh and pass order as per Section 258 of the Code of Criminal Procedure. It is needless to express that the learned trial Court shall expeditiously decide those applications.

7. In view of the above, Criminal Revision Application is allowed. The impugned Order is quashed and set aside and the matter is remitted to the learned trial Court with the aforestated directions.

(P.V. HARDAS)
JUDGE.

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